IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 903 of 2005

WITH

CIVIL APPLICATION NO. 1090 oof 2005

Shivanna Sangappa Birajdar .. Appellant

versus

Somshekhar Sangappa Birajdar .. Respondents

...

Mr.P.K. Dhakephalkar with Niranjan Shimpi for the appellant.

Mr.G.S. Godbole for the respondent nos.3 and 4.

CORAM : B.H. MARLAPALLE,J

DATED : 4th October 2005

P.C.:

1. Heard Mr.Dhakephalkar with Mr.Niranjan Shimpi, learned counsel for the appellant plaintiff.

2. Special Civil Suit no.237 of 2004 has been filed by the plaintiff on or about 6th November 2004 for partition of the suit property and separate possession of his 1/4th share from the suit property. During the pendency of this suit, an application at Exhibit-43 came to be filed on or about 5th March 2005 for appointment of Court Receiver in respect of three firms viz. S.K. Birajdar, M/s.S.K.Birajdar & Sons and Birajdar Medical and General Stores. The learned Civil Judge, Sr. Division at Solapur was pleased to reject the said application at Exhibit-43 by order dated 9th August 2005 and hence this appeal. It has been noted that the defendants have placed on record the statement of accounts of all the three firms and the plaintiff sought assistance of an expert to read the said statements. The trial Court observed that the plaintiff was at liberty to appoint an expert to go through the statements but for the same parties, the Court Receiver need not be appointed. The trial Court also noted the willingness of the defendant to go ahead with the trial of the suit on day to day basis. The reasoning set out by the trial Court does not call for interference in this appeal.

3. The appeal is therefore dismissed in limine and the trial of the suit i.e. Special Civil Suit no.237 of 2004 is directed to be completed preferably by 31st March 2006. Suit be decided on merits and without being influenced by the impugned order.

B.H. MARLAPALLE, J